S.B.Civil Misc.Appeal No.71/1988.
L.Rs. of Satya Narain vs. The State of Raj.

Date of Order: 21.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Jitendra Chopra for the appellant.
Mr. N.Moolchandani for the respondent.

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This appeal is against the order dated 25.5.1987 by which the learned Addl. District Judge No.1, Jodhpur, in Civil Original Suit No.86/83, allowed the application of the defendant-respondent under Section 34 of the Arbitration Act and stayed the proceedings of the suit.

Brief facts of the case are that a tender notice was issued by the Chief Engineer, Ground Water Board, Jaipur, having no. T-2/76-77, in response to which the appellant submitted his offer which was accepted by the respondent. The agreement was duly executed between the parties on 31.1.1977. There is clause-6 in the agreement providing for settlement of dispute through arbitration.

According to the plaintiff, the plaintiff supplied 23,500 cubic feet gravel respondent-defendant-department. According to the plaintiff, he submitted the bills to the defendant which are mentioned in detail in para no.5 of the plaint. According to the plaintiff, in total the plaintiff supplied 11,611 cubic feet gravel to the defendant-respondent in between 12.1.1977 to 31.3.1977. The cost of this gravel is Rs.45,744.16.

The amount of this quantity of goods was paid to the plaintiff in the months of April, 1977. The gravel which was supplied by the plaintiff from the month of April, 1977 to 2.6.1977 described at S.Nos.10 to 17 in para 5, costing to Rs.44,786.81/-, has not been paid by the defendant-respondent to the plaintiff. The plaintiff gave several letters to the defendant-respondent for early payment and ultimately, served notice under Section 80 C.P.C. on 12.3.1978 through appellant's advocate. On 2.4.1979, out of the above amount of Rs.44,786.81, the plaintiff was paid Rs.13,890.35 only. According to the plaintiff, this was the payment against items mentioned at S.Nos.10 to 12 but the defendant did not pay Rs. 30,896.46. Therefore, the plaintiff filed the suit for recovery of the said amount along with interest. In total, for Rs.41,301.46. It appears from the record of the lower court that summon of the suit was sent to defendant-respondent and the defendant had put in appearance for the first time on 9.10.1979 and on the same day, the defendant submitted application under Section 34 of the Arbitration Act and for staying the suit proceeding in view of clause-6 of the agreement providing for settlement of the dispute through arbitration. The defendant submitted written reply to the application under Section 34 of the Arbitration Act. The trial court by impugned order dated 25.5.1987, allowed the application of the defendant-respondent and stayed the proceedings of the suit with direction to get the dispute settled through arbitration and

as per the terms of the contract dated 31.1.1977, through the Secretary of the Agricultural Department of the Government of Rajasthan.

The appellant has preferred this appeal challenging said order of the trial court dated 25.5.1987. During pendency of the present appeal, sole appellant died and his legal representatives were taken on record.

According to the appellant, the defendant put in appearance on 25.9.1979 and sought time for filing written statement and on the next day on 9.10.1979 submitted application under Section 34 of the Arbitration Act, therefore, in that situation, the application under Section 34 of the Arbitration Act was not maintainable. It is also submitted that the respondent-defendant was never ready and willing to get the dispute settled through the arbitration, therefore, there was no justification for the court to stay the proceedings of the suit. The appellant also relied upon several letters which were sent by the plaintiff to the defendant-respondent, wherein the plaintiff claimed the amount from the respondent-defendant in support of his plea that the defendant was never ready and willing to get the dispute settled through the arbitration. In view of the above, according to the appellant, the court should not have stayed the proceedings of the suit.

I considered the submissions of the learned counsel for the appellant and perused the record also.

There is no dispute that the agreement was executed between

the parties on 31.1.1977 and there is a provision for settlement of dispute through the arbitration as per clause-6 of the agreement. The appellant's contention that the defendant put in appearance on 25.9.1979 is contrary to the record. On 25.9.1979, the summon of the defendant was not received by the court and, therefore, the case was adjourned for awaiting the summon of the defendant by fixing the date 9.10.1979. On 19.10.1979, the defendant appeared and submitted application under Section 34 of the Arbitration Act. In view of the above, there is no substance in the submission of the appellant that the defendant took part in the proceedings of the civil suit by seeking time for filing the written statement. So far as sending letters by the plaintiff to the defendant and the notice under Section 80,C.P.C., which was also served by the plaintiff upon the defendant are concerned, it appears that in view of the agreement dated 31.1.1977and the condition therein, the court below held that it is a fit case where the matter should be decided through arbitratoin. The defendant has shown his readiness and willingness to get the matter settled through arbitration by submitting application forthwith on the first day of hearing and on the date when the defendant put in appearance in response to the summon issued by the trial court.

In these circumstances, I do not find that the court below has committed any error of fact or law in allowing the application under

Section 34 of the Arbitration.

Therefore, I do not find any merit in this appeal. Hence the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

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